KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) Section 191/192

DELEGATED DECISION FOR APPLICATION FOR CERTIFICATE OF LAWFUL DEVELOPMENT

Reference no.: 2026/CL/91356/E

Site: 298, Whitechapel Road, Scholes, Cleckheaton, BD19 6HW

Description: Certificate of lawfulness to confirm valid commencement of development of one dwelling approved under planning permission 2022/91299 for erection of residential development of nine dwellings within the 3 year time limit given in condition 1

Case Officer**:** Laura Yeadon

Decision Reference: Certificate of Lawfulness - Granted

I hereby authorise the approval of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

Kirsty Nicholls

AUTHORISED OFFICER

Date 09-Oct-2026

Weblink

Application number: 2026/91356

Site: 298, Whitechapel Road, Scholes, Cleckheaton, BD19 6HW

Proposal: Certificate of lawfulness to confirm valid commencement of development of one dwelling approved under planning permission 2022/91299 for erection of residential development of nine dwellings within the 3 year time limit given in condition 1

1. Application

1.1 The applicant seeks a certificate of lawful development from the Local Planning Authority to confirm that works at the site have been carried out pursuant of planning permission reference 2022/91299 for the erection of a residential of nine dwellings within the time lint given in condition 1 of the above application.

1.2 The application is submitted in accordance with Section 191 of the Town and Country Planning Act ["The Act"] and is stated within the application that a certificate is sought to establish that planning permission for the residential development has been implemented via the following works:

a) The removal of the contamination hotspot and work with the consulting Engineer on validation/testing of the soils
a) Removal of the boundary walling at the suite entrance for improved visibility splays
b) Demolition of a section of the existing terraced outbuildings to the rear of the house to be retained

1.3 If it is concluded that the works listed above were undertaken lawfully and pursuant to the planning permission, it may be concluded that the planning permission has been implemented and can be completed in accordance with the approved plans.

1.4 It is noted that informal pre-application advice was sought with the Local Planning Authority prior to the submission of this application.

2. Lawful Use Certificates

2.1 Section 191 (1) (a) of the Town and Country Planning Act 1990 ("The Act") permits any person who wishes to ascertain whether any operations or proposed use of buildings or other land would be lawful to make an application to the Local Planning Authority.

2.2 Section 191(2) of the Act provides that uses are lawful if at any time if no enforcement action may be taken in respect of them and they

do not constitute a contravention of any of the requirements of any enforcement action then in force.

3. The Relevant Test

3.1 The burden of proof lies firmly with the Applicant and the relevant test for whether the development can be deemed lawful is the 'balance f probability'.

3.2 The Applicant's evidence does not need to be corroborated by 'independent' evidence. If the Local Planning Authority have no evidence of their own, or from others, to contradict or otherwise make the Applicant's version of events less than probable, there is no good reason to refuse the application, provided the Applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

4. Limitations

4.1 A Lawful Development Certificate must contain precise details of what use or operations are found to be lawful, why and when. These details will not be legally equivalent to a planning condition or limitation. They will be a point of reference specifying what was lawful at a particular date against which any subsequent change may be assessed. If the use subsequently intensifies or changes in some way to the point where a 'material' change of use takes place, a Local Planning Authority may then consider further development has taken place.

5. Site visit

5.1 No site visit has taken place

6. Site history

6.1 Relevant site history:

2022/91299 – Erection of residential development – Conditional Full Permission – granted 4th July 2023

2025/92741 – Discharge of details reserved by conditions 4 (Remediation Strategy). 9 (CMP), 10 (visibility splays), 11 (estate roads), 12 (noise) on previous permission 2022/91299 for erection of nine dwellings – approved – 23rd January 2026

6.2 Relevant enforcement history:

None

7. Evidence submitted in support of the application

- Application form – ref: PP-14947824
- Location plan – ref: GFWR-MWA-XX-XX-DR-A-0001-P1
- Existing site plan – ref: GFWR-MWA-XX-XX-DR-A-0002-P1
- Proposed site plan – ref: GFWR-MWA-XX-XX-DR-A-0003-P11
- Planning Statement – ref: GFWR-MWA-XX-XX-RP-A-0002_S2_P01
- Remediation Addendum – ref: E21/7893/MD/04

8. Evidence submitted against the application

8.1 None

9. Consultation

9.1 None required

10. Assessment of Evidence

10.1 The applicant states within the application form that a lawful start to the development on 18th May 2026. The submitted Planning Statement details within Part 2.0 that following the approval of the proposed scheme, a discharge of condition application was submitted to the Council in January 2026 for discharge conditions 4, 9, 10, 11 and 12 which were subsequently discharged.

10.2 It goes on to state that consultation was undertaken with Kirklees Planning in February 2026 on lawful commencement of works and it was agreed that the following implementation would be sufficient:

a) The removal of the contamination hotspot and work with the consulting Engineer on validation/testing of the soils
a) Removal of the boundary walling at the suite entrance for improved visibility splays
b) Demolition of a section of the existing terraced outbuildings to the rear of the house to be retained

10.3 The Planning Statement, under section 3.0 details the remediation objectives, under section 4.0 details are provided with regards to visibility splays and under section 5.0 the details regarding the demolition works are provided.

11. Commencement

11.1 National Planning Policy Guidance state that if a Local Planning Authority has no evidence itself, not any from others, to contradict or otherwise make the applicant's version less than probable there is no reason to refuse the application. In this instance, within the Planning Statement, it details when works were carried out with photographic evidence.

11.2 Section 91 of the Town and Country Planning Act 1990 provides a default time frame or which development must begin and states that the relevant time limit for beginning the development is no later than the expiration of 3 years. In this case, this was imposed on the decision notice for the relevant application 2022/91299 under Condition 1. As such, taken from the date of the issue of the permission, the commencement of works would need to commence prior to 3rd July 2026.

Assessment of evidence:

a) The removal of the contamination hotspot and work with the consulting Engineer on validation/testing of the soils

11.3 The Planning Statement details under section 3.0 that remediation works carried out were the removal of the material from the lead contamination hotspot TP01 to a licensed waste facility. It states that Haigh Huddleston associates (Consulting Engineer) attended the site in March 2026 with a JCB excavator/driver and that samples were taken and chemically analysed in a laboratory in April 2026 where elevated levels of lead were recorded in one of the five samples. In addition to the information within the Planning Statement, a Remediation Addendum has been submitted which is dated 1st May 2026. This document clearly states that initial remediation work has been started on the development ass detailed within the Remediation Method Statement.

11.4 A Certificate of Analysis has been submitted which was issued on 15th April 2026 is appended to the Remediation Addendum document which details that analysis of the soil samples taken ad that the date of completion of testing being 15th April 2026.

11.5 The timeline within the Addendum document is corroborated by the Planning Statement and the photographs submitted. Whilst the photographs within section 3.0 of the Statement are not dated stamped within the photograph itself, the Statement states that the photographs contained within this section demonstrate the contaminated land being removed to a skip on site and the excavation are showing evidence of the made ground.

11.6 Consequently, in the absence of any information to the contrary, it can be reasonably concluded that these works were carried out prior to the lapse of planning permission in early July 2026.

a) Removal of the boundary walling at the suite entrance for improved visibility splays

11.7 Under section 4.0 of the Planning Statement, photographs have been submitted which are not date stamped. However, the photographs claim the following:

- 22.8.2018 – existing land entrance showing gates, walling and hedge row
- 18.5.2026 – view of existing access looking east along Whitechapel Road
- 22.8.2018 – view of existing access looking west along Whitechapel Road
- 18.5.2026 – Demolished wall and realigned railing to new VS (visibility splays) looking west along Whitechapel Road
- 18.5.2026 – section of stone walling removed and realigned railings to new VS looking east along Whitechapel Road
- 18.5.2026 – view of reordered entrance to new VS

11.8 It appears that the works required which are demonstrated on the visibility splay plan submitted as part of the application to discharge conditions have been undertaken insofar as the existing walls to the site frontage have been removed. It does not appear to that the works to remove the walling inside the site have been undertaken.

11.9 However, in absence of any information being submitted to the contrary, it can be reasonably concluded that the commencement of works to create the visibility splays commenced prior to the lapse of planning permission in early July 2026.

b) Demolition of a section of the existing terraced outbuildings to the rear of the house to be retained

11.10 The Planning Statement claims that demolition has taken place in the form of a section of the existing terraced building to the rear od the house. This is demonstrated by photographs which are not date stamped within section 5.0 of the Statement and claim the following:

- 18.5.2026 – view of the end terraced outbuilding facing west pre-demolition
- 22.8.2018 – view of the end terraced outbuilding facing east pre-demolition
- 22.8.2018 – internal image of the outbuilding pre-demolition
- 18.5.2026 – view of demolished outbuilding facing west
- 18.5.2026 – view of demolished outbuilding facing north

11.11 From viewing the submitted photographs, it appears that the section of outbuilding was demolished on 18th May 2026 which is prior to the lapse of planning permission in early July 2026.

Conditions

11.12 Planning permission was granted for the scheme under planning permission reference 2022/91299 and the decision notice listed a number of conditions that required further details to be agreed prior

to development commencing [“Pre-Development Conditions”]. The Court has held (Whitley & Sons v Secretary of State for Wales (1992)) that Pre-Development Conditions must be discharged for a development to be lawfully implemented. This is referred to as the Whitley Principle. The Court has since held that a number of exemptions may be applicable to the Whitley Principle whereby a breach of condition need not to be fatal to the implementation of planning permission. J Waksman (Bedford Borough Council v Secretary of State for Communities and Local Government & Murzyn (2008)) succinctly summarised the Court interpretation of these exceptions in paragraph 24 of his judgement. He states that there are three questions to be asked:

1) Has there been a breach of condition?
1) If so, is the effect of that breach of condition such as to render the development as a whole unlawful (i.e. does it go to the heart of the permission?
2) If so, do any of the exceptions to the Whitley Principle apply, such as irrationally, abuse of power on the part of the LPA if it sought to enforce, or compliance in substance.

Essentially where the answer to questions 1 and 2 are yes, and no exceptions apply in question 3 then works carried out are unlawful and the permission was not lawfully implemented.

11.13 In this case, the approved application in relation to conditions shall be assessed below:

1) Works shall be begun within 3 years off the date of the permission
1) Works to be carried out in accordance with the approved plans
2) Development completed using natural stone walling and artificial slates
3) Ground works shall not commence until a remediation strategy has been submitted and approved - pre-development condition
4) Remediation carried out in accordance with condition 4
5) Verification Report carried out on accordance with condition 5
6) Prior to first occupation, electric recharging points to be installed
7) Implementation of mitigation measures set out on Bat Mitigation Strategy
8) Construction Management Plan to be submitted and approved – pre-development condition
9) Agreed visibility splays to be implement – pre-development condition
10) Details of proposed internal estate roads to be submitted and approved – pre-development condition
11) Noise report to be submitted and approved – pre-development condition

11.14 The above conditions indicate that conditions 4. 9, 10, 11 and 12 were pre-development/commencement conditions which were

required to be discharged prior to any development works being carried out. Under application number 2025/92741, details were submitted which related to the discharging of the aforementioned conditions which were determined on 23rd January 2026.

11.15 The details within the decision letter were as follows:

- Condition 4 – Remediation Strategy – acceptable and condition discharged
- Condition 9 – Construction Method Statement – acceptable and discharged om the bass of the submitted information however it remains a condition due to post development road condition survey being required
- Condition 10 – visibility splays – acceptable as a temporary measure however cannot be discharged in totality until permanent works have been undertaken
- Condition 11 – internal estate roads – scheme submitted is acceptable to be discharged however a requirement of the condition that the scheme is retained following the buildings being brought into use and therefore cannot be fully discharged
- Condition 12 – noise report – acceptable an discharged provided that all works are carried out in full and retained thereafter.

12. Conclusion

12.1 Assessing all the above information in relation to the timeline of the original planning permission, details contained within the discharge of conditions application and based upon the information submitted as part of this application, it is clear that the pre-commencement/development conditions were discharged prior to any works being carried out.

12.2 Therefore, the applicant has demonstrated that on the balance of probability, that works that have commenced on site in terms of the removal of the contamination hotspot for investigation, the removal of the boundary wall to the access to the site to provide visibility splays and the demolition of part of one of the existing outbuildings have been carried out lawfully and pursuant to planning application 2022/91299. It is therefore recommended that a Certificate can be issued to confirm the lawfulness of the works which have been carried out prior to the lapse of permission om 3rd July 2026.

Recommendation – Grant Certificate

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Application form	PP-14947824		19th May 2026
Location plan	GFWR-MWA-XX-		19th May 2026

Plan Type	Reference	Version	Date Received
	XX-DR-A-0001-P1		
Existing site plan	GFWR-MWA-XX-XX-DR-A-0002-P1		19th May 2026
Proposed site plan	GFWR-MWA-XX-XX-DR-A-0003-P11		19th May 2026
Planning Statement	GFWR-MWA-XX-XX-RP-A-0002_S2_P01		19th May 2026
Remediation Addendum	E21/7893/MD/04		19th May 2026